

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**BANNER LIFE INSURANCE
COMPANY,**

Plaintiff,

v.

**GINA M. TOM, GARY LONNIE
MASIONGALE, SUNSHINE WEHNER,
AMANDA N. SHERMAN, JERRY L.
MASIONGALE, GARY L.
MASIONGALE, NELDA
MASGIONGALE GARRETT, and THE
ESTATE OF DEBRA A. WEHNER,**

Defendants.

Case No. 3:20-cv-00328-TMR

CONSENT & DEFAULT JUDGMENT

This cause coming before the Court on Plaintiff Banner Life Insurance Company's ("Banner") Agreed Motion for entry of agreed upon Consent Judgment (Doc. No. 31), the Court being fully advised as to the premises, the Court hereby finds that:

1. On August 5, 2020, Banner filed its Complaint for Interpleader pursuant to 28 U.S.C. § 1335 seeking to interplead the proceeds of a life insurance policy issued by Banner to Jessie T. Masiongale as owner and insured, no. 010588984 (the "Policy"). (Compl. ¶ 13).
2. The Court has jurisdiction over this matter under 28 U.S.C. § 1335 because one or more Defendants is diverse from the other Defendants and because the matter in controversy exceeds \$500. (Compl. ¶¶ 2-11).
3. Defendants, Gina M. Tom ("Gina"), Gary Lonnie Masiongale ("Gary Lonnie"), Sunshine Wehner ("Sunshine"), Amanda N. Sherman ("Amanda"), Jerry L. Masiongale ("Jerry"),

Gary L. Masiongale (“Gary”), Nelda Masiongale Garrett (“Nelda”), and the Estate of Debra A. Wehner (“Estate”) are potentially adverse claimants to Policy proceeds.

4. Each of the Defendants has either waived service of summons, filed an answer to the Complaint, or been served with summons and the Complaint. (Doc. Nos. 5-11, 18-19, 22, 24).
5. Defendants Amanda, Jerry, Gary, and Nelda all failed to answer or otherwise respond to the Complaint. Their default was entered by the Clerk on November 24, 2020, and a Default Judgment was entered against them on January 22, 2021. (Doc. Nos. 25, 30).
6. On December 2, 2020, the Court entered an order granting Banner’s Motion for Leave to Deposit its Admitted Liability into the Registry of the Court (Doc. No. 26). Banner deposited its admitted liability in the amount of \$40,497.28 on December 16, 2020. (Doc. No. 27).
7. Banner filed its Complaint for Interpleader in good faith and has done all that is required by law to perfect its interpleader action.
8. By agreement of the appearing parties, Banner is entitled to a reimbursement of \$6,000.00 in attorney fees and costs for bringing this action, to be paid out of the funds currently held by the Registry of the Court. No interest shall be paid to Banner.
9. Banner is entitled to be discharged from this litigation in accordance with the terms as provided in this order.
10. By Agreement of the appearing parties, the remainder of the Policy proceeds deposited with the Registry of the Court, including any interest held by the Registry of the Court, shall be paid as follows:

- a. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Gina M. Tom;
- b. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Gary Lonnie Masiongale;
- c. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Sunshine Wehner; and
- d. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Amanda N. Sherman.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- A. By consent of the appearing parties, Plaintiff Banner, Defendant Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Defendant Gary Lonnie Masiongale, and Defendant Sunshine Wehner, judgment is granted in favor of Banner on its Complaint for Interpleader and against Defendants Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Gary Lonnie Masiongale, and Sunshine Wehner;
- B. Banner, its successors, assigns, representatives, agents, attorneys, and all of its affiliated companies, including officers, directors, and employees are hereby released and discharged from any and all liability under life insurance policy number 010588984 insuring the life of Jessie T. Masiongale, or arising on account of the death of Jessie T. Masiongale, to each or all of the Defendants Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Gary Lonnie Masiongale, and Sunshine Wehner, or any person or entity claiming through them;
- C. Defendants Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Gary Lonnie Masiongale, and Sunshine Wehner, and any person or entity claiming through them, are hereby perpetually restrained and enjoined from commencing or prosecuting any proceeding or claim against Banner and each of its parents, subsidiaries, and affiliated companies, and each of their respective officers, directors, employees, agents, attorneys, representatives, shareholders, insurers, predecessors, successors, and assigns, in any state or federal court or other forum with respect to the proceeds payable under policy number 010588984 insuring the life of Jessie T. Masiongale, or on account of the death of Jessie T. Masiongale, and this injunction is issued without bond or surety;
- D. Defendants Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Gary Lonnie Masiongale, and Sunshine Wehner, and any person or entity

claiming through them, are hereby collaterally estopped from commencing or prosecuting any proceeding or claim against Banner and each of its parents, subsidiaries, and affiliated companies, and each of their respective officers, directors, employees, agents, attorneys, representatives, shareholders, insurers, predecessors, successors, and assigns, in any state or federal court or other forum with respect to the proceeds payable under policy number 010588984 insuring the life of Jessie T. Masiongale, or on account of the death of Jessie T. Masiongale;

- E. In accordance with 28 U.S.C. § 2042, Fed. R. Civ. P. 67 and L.R.77.2, upon receipt of a current W-9 for Banner, the Clerk is ordered to issue a check in the amount of \$6,000.00 payable to Banner Life Insurance Company, mailing address c/o Chittenden Murday & Novotny, LLC, 303 W. Madison St., Suite 2400, Chicago, IL 60606;
- F. By agreement of the appearing parties, Plaintiff Banner, Defendant Gina M. Tom both individually and on behalf of the Estate of Debra A. Wehner, Defendant Gary Lonnie Masiongale, and Defendant Sunshine Wehner, after Banner's attorney fees and costs are paid from the Registry of the Court in accordance with paragraph E, the remaining Policy proceeds held by the Registry of the Court, including any accumulated interest, are to be paid out as follows:
 - i. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court less any applicable fee under L.R.77.2, to Defendant Gina M. Tom;
 - ii. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Gary Lonnie Masiongale;
 - iii. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Sunshine Wehner; and
 - iv. \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Amanda N. Sherman;
- G. In accordance with 28 U.S.C. Section 2042, Fed. R. Civ. P. 67 and L.R.77.2, upon receipt of a current W-9 for each payee, the Clerk is ordered to issue the following:
 - i. A check in the amount of \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Gina M. Tom, mailing address 491 Caldwell Circle, New Carlisle, OH 45344;
 - ii. A check in the amount of \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Gary Lonnie Masiongale, mailing address 5492 Waterloo Road, Dayton, OH 45459;
 - iii. A check in the amount of \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Sunshine Wehner, mailing address 201 Sycamore Street, Medway, OH 45341; and

- iv. A check in the amount of \$8,624.32 plus one-fourth of any interest held by the Registry of the Court, less any applicable fee under L.R.77.2, to Defendant Amanda N. Sherman, mailing address 1248 Park Drive, Cookeville, TN 38501;

H. This Judgment constitutes the FINAL JUDGMENT in this matter.

DATED: March 15, 2021

ENTERED: Thomas M. Rose

U.S. District Judge

Consent Judgment Agreed Upon by:

BANNER LIFE INSURANCE COMPANY

By: /s/ Sara G. Janes

Sara G. Janes (IL Bar No. 6316807)
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